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Supreme Court of Wisconsin.

RAWSON MANUFACTURING CO. v. RICHARDS.

An attachment is properly granted and is a justification in the hands of the sheriff, even if the complaint alleges a cause of action *ex delicto* and the evidence tended to prove a tortious conversion ; in such cases, it is always competent to waive the tort and sue on the contract.

A written contract for the sale of personal property, stipulating that the title to the property is to remain in the vendor until the purchase-money is paid, is only valid in Wisconsin between the parties to the contract and those having actual notice of it, unless the contract, or a copy thereof, is filed in the office of the clerk of the town, city, or village where the vendee resides, as required by Rev. Stat. § 2317.

Notice to a creditor, of the terms of such a contract, is sufficient notice to bind the sheriff in executing an attachment upon property of the defendant, and a seizure would be wrongful.

APPEAL from Circuit Court, Grant County.

The defendant was, during the times herein mentioned, sheriff of Grant County. August 26, 1886, there was placed in his hands, as such sheriff, a summons, complaint, and attachment papers, in an action wherein the Milwaukee Harvester Company was plaintiff, and one Thomas L. Lomas, of Fennimore, Grant County, was defendant, with direction to serve and execute the same, and which he did then and there serve and execute ; that in doing so he attached a large number of agricultural implements as the property of said Lomas ; that the complaint in said attachment suit alleged, in effect, the incorporation of the Milwaukee Harvester Company, aforesaid ; a contract between it and Lomas, under which it furnished Lomas certain agricultural implements and extras, described, at prices named, during the summer of 1886, to the amount of \$4310.95, to be sold by him for it, and all the moneys and notes received therefor, thereupon to be remitted and turned over to it ; that Lomas had sold all of such machines and extras, and received therefor cash and notes ; that Lomas had not paid the Milwaukee Harvester Company for any portion of said machines or extras ; that he had failed and neglected to account to it for any of the cash or notes so received by him, and had converted all of said property to his own use ; that there was due and owing from him to it, therefor, the

sum of \$4810.95 ; that he had refused to settle or turn over to it said cash or notes, after being duly demanded. Among the machines so attached by the defendant herein, as such sheriff, were three Rawson reapers and four Rawson mowers, which Lomas had previously received from the plaintiff herein. September 6, 1886, the plaintiff herein demanded of said sheriff said seven Rawson machines, which he refused to deliver, and thereupon the Rawson Manufacturing Company brought this action against said sheriff to recover \$485, as the value of said seven machines. The said sheriff justified under said attachment. At the close of the trial the jury returned a verdict for the defendant herein, and from the judgment entered thereon the plaintiff brings this appeal.

C. M. Rice, for appellant.

Orr & Lowry, John D. Wilson, and Carter & Cleary, for respondent.

CASSODAY, J. It is urged that the complaint in the attachment suit "alleges a cause of action *ex delicto*," and hence that the attachment was improvidently granted, and no justification in the hands of the sheriff. The substance of the complaint is stated above. It is to the effect that Lomas converted to his own use the moneys and notes he received as agent. There is no allegation that such conversion was wrongful, unlawful, or fraudulent. The evidence in that case probably tended to prove that such conversion was tortious. But in such cases it is always competent to waive the tort, and sue on the contract: *Walker v. Duncan*, 68 Wisc. 624. This is just what was done. The contract between the plaintiff herein and Lomas was in writing, dated December 10, 1885, and is to the effect that the plaintiff agreed to furnish to Lomas, on the conditions therein mentioned, the machines therein described, at the respective prices therein mentioned, "net," payable by cash or good indorsed notes, taken of farmers, to be indorsed by Lomas, or to contain a true property statement, showing each purchaser to be worth \$1000 over and above all liabilities and exemptions ; and in case any of such notes proved to be uncollectible, Lomas therein agreed to make them good to the plaintiff,

and to settle for all machines ordered by November 1, 1886, and to pay for all machines sold, in cash, at such time of settlement. Said machines were to be delivered by the plaintiff on the cars at Milwaukee, and Lomas was to pay all freight and charges on the same. The machines were to be sold in Grant County only. A discount was to be allowed by the plaintiff on all cash paid by October 1st; and if the whole account was then paid in cash, 10 per cent. discount was to be allowed. Lomas therein agreed to settle for all machines, drawing notes to the order of the plaintiff, and on their blanks, and to sell as per plaintiff's printed warranty, so that the test would be a matter of fact, not of choice. The plaintiff therein agreed to furnish all posters, circulars, and pamphlets free of charge, save the transportation on the same, and Lomas was to distribute the same. No deductions or promises were to be allowed save those mentioned in that contract; and the plaintiff was not to be held liable—in case of fire, or should the demand exceed the production—in case it could not fill orders sent it. The contract also contained this clause: "Any machines, extras, or notes, taken for machines on hand, are such that the title and right of ownership do not pass from the * * * (plaintiff) until this account is paid in full." The plaintiff also therein reserved the right to revoke the contract at any time it deemed itself insecure, and take possession of said machines and extras.

The Court charged the jury, in effect, that whatever machinery Lomas had received from the plaintiff under the contract, and not paid for at the time of the attachment, was, as between it and Lomas, the property of the plaintiff; that the proof showed that the contract was not filed before the attachment, as required by section 2317, Rev. St. That section provides that "no contract for the sale of personal property, by the terms of which the title is to remain in the vendor, and the possession thereof in the vendee, until the purchase price is paid, or other conditions of sale are complied with, shall be valid as against any other person than the parties thereto and those having notice thereof, unless such contract shall be in writing, subscribed by the parties, and the same or a copy thereof shall be filed in the office of the clerk of the

town, city, or village where the vendee resides," etc. Exception is taken because the Court, in effect, submitted to the jury the question whether, at the time of levying the attachment, the defendant knew of, or had reasonable cause to believe in, the existence of such contract, or that Lomas was not at the time the owner of such machines. The Court also charged, in effect, that in making the attachment, the sheriff acted, in a sense, as the agent of the Milwaukee Harvester Company, and any notice the company, or its authorized agent in the matter of said suit, might have had at the time of the attachment, would be notice that would bind the defendant as such sheriff. There can be no question that the charge was sufficiently favorable to the plaintiff, if the contract was "for the sale of personal property" upon the condition named in the section, and we are clearly of the opinion that it was. The contract being of the nature indicated, and not having been filed as required by the statute, the title to the seven Rawson machines mentioned must be conclusively presumed to have been in the vendee, Lomas, who was still in possession at the time of the levy of the attachment thereon in favor of his creditors, having no such notice as is mentioned in the section. *Kimball v. Post*, 44 Wis. 476. The evidence sustains the verdict of the jury, and the verdict conclusively negatives the existence of any such notice.

The judgment of the Circuit Court is affirmed.

In *Hunter v. Warner*, 1 Wisc. 146, the Court decided that what is called a conditional sale is an agreement to sell. The Court quoted with approval *West v. Bolton*, 4 Vt. R. 558. There, the vendor in a conditional sale, on failure of the vendee to pay one instalment, replevied, although the vendee had paid more than half the price of the cow. From this case it appears that the conditional vendee, on failure to comply with the condition, may either retake possession of the property or sue for its value. In *Williams v. Porter*, 41 Wisc. 426, Williams sold two horses to Mallory

for \$140, to be paid 1st January, 1885; if payment not made then, Williams was to be the full owner of the horses. Payment was not made and the contract was not filed by Williams. The Court held "the manifest object of the statute is to place such contracts on the footing of chattel mortgages, and if a contract of that kind is not reduced to writing and filed in the proper offices, it is void as to third persons, and the property affected by it in the possession of the vendee is liable to seizure as his property, in an execution issued upon a judgment against him. In

this case, the property affected by the contract was by its terms to *remain* in the possession of the vendee and for the benefit of the vendor, Williams, and as his security. He owed this duty to persons not conversant with the contract, that it should be filed as required by the law, that they might not be led to deal with Mallory as actual owner, as an inference from his possession."

It was claimed by the plaintiffs that section 2317 of the Revised Statutes of Wisconsin should be construed as confined to contracts containing two stipulations in favor of the vendor: first, that he shall retain the title till the purchase price of the property is paid; and, secondly, that the vendee shall stipulate to *retain* the possession, that is not to sell or otherwise dispose of the property, till he has paid the purchase-money. These are stipulations, that third persons dealing with the vendee as the owner ought to be informed of by the vendor if he intends to enforce them against such persons. By writing and filing of the contract the public would be warned not to give credit to the vendee as owner, or purchase from him as such. A hypothetical case will show what consequences would follow from enforcing a contract in favor of the vendor, which, when properly filed, contains only the stipulation that the title to the property shall remain in him till the purchase price shall be paid.

Suppose a home merchant in Fennimore purchases his stock of goods from furnishing houses in Chicago or Milwaukee, and upon each invoice or bill of goods, the buyer and seller write and sign this agreement: "It is agreed that the title to the foregoing described goods shall remain in the seller till the purchase price is paid." It is, of course, known to the

seller that the goods are bought by his customer for the purpose of retailing them at the place of business of the buyer, where the contract is assumed to be filed, according to section 2317. The wholesale house might thus retain as potential control over the property in the store of the local merchant as if he had never parted with its possession. The country merchant, always largely in debt, could own nothing, except through the grace of his master. He could not sell, assign, or mortgage his stock of goods unless the wholesale merchant, the preferred creditor, should be first paid. The latter can delay, postpone, or defeat the claims of all other creditors of the local merchant to any goods not paid for, and yet permit him to sell the goods without applying the money to the payment of his lien. The vendor's lien could not be apportioned, and its amounts reduced by the daily sales of the local merchant and attached to the goods unsold; this would require another contract to be filed, invoicing the goods unsold, and the amount still unpaid; nor could each piece of goods be held for its invoice price, for this would create hundreds of distinct contracts instead of one. The vendee's creditors should be informed every day of the amount of the vendor's lien, and the contract filed at first must give way to new ones. The meaning of the reservation in favor of the vendor, without doubt, is, that the original contract price for all the goods should be a lien on what remains to be sold.

In the case supposed, the vendee not only being authorized to sell the goods but to appropriate the proceeds as his own, should be held as to all persons outside the contract as the absolute owner of the property. No man can well have a more ample title and dominion over personal property

than its possession and power to sell it and appropriate the proceeds. When the owner has invested the vendee with such authority he can have no right to restrain its exercise. Such property, according to undisputed authority, is liable to seizure on execution issued on a judgment against the vendee, in payment of his debt: *Ludden v. Hazen*, 31 Barb. 651; *Griswold v. Sheldon*, 4 Comstock R. 587; *Lewis v. McCabe*, 49 Conn. 141, reported in 21 AMERICAN LAW REGISTER, 217 and notes.

The Supreme Court of Wisconsin would probably decide a contract between vendor and vendee of personal property with reservation of title in the vendor till the purchase price was paid, yet authorizing the vendee to sell and appropriate the money, as wholly void against vendee's execution creditors, whether the contract was filed or not. [So in other States, see *infra*.]

Were such the terms of the Thomas Lomas's contract, were Lomas authorized to sell the machines and appropriate the money as his own, the Court would have rightfully decided that Lomas was the actual owner of the property at least as far as his creditors were concerned, and this would have appeared from the contract itself and its filing could not alter its terms. The distinction is, that so far as third persons are concerned with this contract, Lomas was an agent for the Thomas, nor was it denied on the sale that the harvester company knew and recognized Lomas as plaintiff's agent in selling their machines. A principal, unless he knowingly permits his sales agent to dispose of his goods under claim of exclusive ownership, is not required to make his interest in the property publicly known, in order to protect it from executions against the agent in

favor of his creditors. It is the universal custom and usage of manufacturing companies of costly farm machinery, to sell their property through agents. There are no owners between the manufacturer and the farmer who uses the machines, nor would the manufacturers be willing that their implements should be sold as general merchandise, as hoes, axes, and brooms are. The manufacturers desiring to enlarge their markets and render their machines popular and well known, seek out agents fitted by nature and experience for such business.

The defendant recovered on the ground of plaintiff's failure to file the written contract; not for the reason that it supposed Lomas was the owner of the machines and was selling them on his own account. Plaintiff's machines were fresh and new and stenciled and tagged with their names, and were easily recognizable: *Story, Agency*, § 96; *Villas v. Mason*, 25 Wisc. 310.

It will, perhaps, lead to a better understanding of section 2317, if the rulings of Courts anterior to the statute which is similar to many which have been enacted in other States, should be considered. The Supreme Court of Pennsylvania adjudged conditional sales, where the property is delivered to the purchaser with the condition that the title is to remain in the vendor till the purchase-money is paid, as absolutely void as against creditors and purchasers from the vendee, whether such persons knew of the condition of sale or not. So long as that Court adheres to such decision, it would be of no utility to write out and publish such contract to the world, by filing or other means: *Martin v. Mathiot*, 14 S. & R. 214. [See *infra*.]

In the State of New York and all

the Eastern States, the law has been, and, perhaps, so remains, that a vendor retaining title till the price was paid, might replevy it from a purchaser from his vendee who had purchased it in good faith in ignorance of the want of title of the party in the actual possession: *Coggill v. H. & N. H. R. R. Co.*, 3 Gray, 549; *Ballard v. Burgett*, 47 Barb. 646; s. c. 40 N. Y. 314; approved in *Bunn v. Valley Lumber Co.*, 51 Wisc. 380; *Budlong v. Cottrell*, 64 Iowa, 234. [And see *infru*.]

It would not validate the purchasers' title from the conditional vendee as against the unpaid vendor, that the latter knew his vendee purchased for the purpose of reselling and that alone: *Burbank v. Crooker*, 7 Gray, 158; overruling *Fitzgerald v. Fuller*, 19 Hun, 180. But when the vendor has *express* authority to sell as in the principal case, all authorities agree that the purchaser from him will have a good title against the original vendor, whether he be paid or not: *Lewis v. McCabe*, ante. "If, however, the contract in question must be construed to mean that the plaintiff authorized McAvoy to sell the property *as his own*, we should be constrained to hold it so absolutely inconsistent with the retention of the title in the plaintiff as to waive the condition."

The position assumed by the plaintiff, that the contract intended by the statute must be one where the vendor has power to prevent the vendee from selling—that is, to compel him to retain possession till he pays the price of the property as security for the vendor, is implied in *Kimball v. Post*, 44 Wisc. 476. In that case, a piano was rented for a term, and the lessee had the right to purchase it at a given price at the end thereof, and to retain possession in the meanwhile. The Court decided that, though this prob-

ably was a conditional sale, the vendor might sue a mere trespasser who took possession of the piano without any right; the non-filing of the contract made no defence as to him. In *Cadle v. McLean*, 48 Wisc. 631, the defendant sold Thompson & Co. standing pine timber on certain land. Thompson & Co. were to cut and manufacture the timber into lumber, and were not to dispose of it without the consent of McLean, until the purchase-money was paid. The agreement was in writing and filed in the proper office. Thompson & Co. sold part of the lumber to Cadle, who did not know of McLean's interest in the property, and the latter having got the property into his possession, Cadle brought his action to recover it. The Court held that the contract was such as is defined in section 2317. The contract prohibited Thompson & Co., being in possession, from selling; that is, they must *remain* in possession till they paid the purchase price. The Court, in deciding that the conditional vendees after this contract was filed, could not sell to another, virtually decides that in such contracts they must continue in possession, and cannot divest themselves of it even by a sale. The Court further held, at least for the sake of analogy, that this contract might be regarded as a mortgage, as though there had been an absolute sale and delivery of the property to Thompson & Co., and a chattel mortgage given back by them for the purchase price. In case of such mortgage to McLean, he would certainly have the right to restrain Thompson & Co. from selling or otherwise doing any injury to the property to the detriment of his lien, and even after the filing, if he should permit Thompson & Co. to sell the property thus under his control for any other purpose than to apply the proceeds

in the extinguishment of his lien, it would be a fraud on other creditors which would render the property liable to their claims. If McLean wished to make his so-called mortgage lien superior to the claims of all other creditors of Thompson & Co., he must file it as he did, and he must have and should exercise the power of restraining sales or transferring any possession by Thompson & Co. to other persons ; and if he did not do so, he would lose his lien as against other creditors. In short, section 2317 only applies where the conditional vendee agrees to hold possession and not sell till he has paid the purchase price, and where the vendor can compel him to retain that possession.

The contract in the principal case was not such a contract as the statute defines, for the reason that the title was neither intended to remain in the vendors nor the possession in the vendee. Where one man sells personal property to another, the parties can make what stipulation they please as to price, the time of payment, passing of the title and delivery of possession : 1 Par. Cont. p. 526.

In this case, plaintiffs sold their machinery to Lomas at four months' credit, Lomas to take immediate possession and sell the machines, the proceeds to belong to the plaintiff till the purchase price was paid. The title, it is stipulated, was to remain in the plaintiffs till they were fully paid, but this language is at variance with a controlling provision in the contract which makes it the duty of Lomas to sell the machines to those desiring to use them as fast as he can ; of course, the title to a machine could only remain in the plaintiffs until Lomas made a sale. Here is a material deviation from the contract defined in the statute and one following by

different consequences. Here, the plaintiffs sold the machines as owners through Lomas as their agent. No injury could have been done to Lomas's creditors because they had not been notified by the plaintiffs, by filing the contract or otherwise, of this relation between them and the plaintiffs. The character of Lomas's business notified all persons of that ; the contract would not have told them of more. Neither had Lomas's creditors any vested right to this contract when it was made that would estop the parties thereto from altering it as they pleased. They could extend the time in which Lomas was to pay the contract price for the machines, or Lomas could have been released from that contract of purchasing the machines *in toto*, and his creditors could not complain although the contract might be very favorable to Lomas's expected profit. Plaintiffs could have authorized Lomas to use the money on sales for his own benefit, instead of applying it to the payment of what he owed plaintiffs for the machines ; and for this, Lomas's creditors could not complain. But under a contract of the character defined in the statute, since the plaintiffs, to make their title or lien effectual, must keep the property in the vendee's possession and not permit him to dispose of it, and so incur a duty to the unpreferred creditors of Lomas whom they may hinder and delay ; plaintiffs and Lomas by assent between themselves could not have permitted Lomas to use the property for his own benefit or otherwise dispose of it, except for paying his own debts, without subjecting it to the executions or attachments of such creditors : *Stewart v. Deuster*, 23 Wis. 136 ; 61 Wisc. 390.

J. I. MILLS.
Lancaster, Wisc.

The case of *Lewis v. McCabe*, as pointed out above, appeared in 21 AMERICAN LAW REGISTER, 217-235, with an annotation, giving the condition of the law in most of the Courts of this country down to 1882. One of the editors of THE REGISTER, in the last edition of Benjamin on Sales (Bennett's edition, 1888, pp. 271-8), has furnished a convenient digest of the American cases on this subject, to a recent date, arranged by States. Cases decided since the publication of this edition are subjoined together with some of the State statutes commented on, and such older cases as are necessary to show the present condition of the law in this country.

In the United States Supreme Court, the decisions of *Hervey v. The Locomotive Works*, 93 U. S. 664 (1876), and *Herriford v. Davis*, 102 U. S. 235 (1880), have been followed in the cases arising from the foreclosure of the mortgages on the Chicago, Danville, and Vincennes R. R., 99 U. S. 235, 256, 258 (1878), and in *Harkness v. Russell*, 118 U. S. 663 (1886). In the latter case, the Court decidedly express the opinion, that the decisions supporting the Illinois doctrine "are few in number, compared with those in which it is held that conditional sales are valid and lawful, as well against third persons, as against the parties to the contract. * * * But as the rulings of this Court have been, as we think, somewhat misunderstood, we have thought it proper to examine the subject with some care, and to state what we regard as the general rule of law, where it is not affected by local statutes or local decisions to the contrary:" per *BRADLEY, J.*

The *Illinois* doctrine is very nearly in conformity with the English bankrupt law as interpreted by their Courts and is this: "If a person

agrees to sell to another a chattel, on condition that the price shall be paid within a certain time, retaining title in himself in the meantime, and delivers the chattel to the vendee so as to clothe him with the apparent ownership, a *bona fide* purchaser or an execution creditor of the latter is entitled to protection as against the claim of the original vendor :" *BRADLEY, J. Harkness v. Russell*, 118 U. S. 678, and citations. The immediate delivery of personal property, capable of such change of possession, is equally insisted upon where a purchase is made for cash paid: the vendor allowed to retain possession, can make a good title by delivery to a second purchaser for value, in good faith and without knowledge of the first sale: *Gradle v. Kern*, 109 Ill. (1884). See *infra*, II., for statute relating to railroad equipment.

Kentucky follows the Illinois doctrine, unless a lien is reserved. See *infra*, II.

The *Maryland* Court of Appeals (*Lincoln v. Quynn et al.*, Jan. 6, 1888, per *BRYAN, J.*) said that twenty years had passed since *Hall v. Hinks*, 21 Md. 406 (1863), and this decision had been repeatedly approved in deciding "that a *bona fide* purchaser, without notice of the condition upon which his vendor has acquired the possession, will be protected against the claim of the original vendor, in the same manner where the sale and delivery are conditional as where the possession has been obtained by fraud." And this principle was then extended to a *bona fide* mortgagee without 'notice, but refused to one with notice.

In *Pennsylvania* there is no statutory regulation, and the same doctrine prevails as to sales. *Wire Book Sewing Machine Co., Limited, v. Crowell*, decided by the Supreme Court of that

State, January 17, 1887, adhered to the former decisions, holding that a contract to purchase a patented machine for notes, but no bill of sale to be given until the maturity of the notes, and if the notes should not be then paid, any payments on account to be considered rental and royalty, and the contract to terminate and the seller to resume possession, was a clear case of a conditional sale on credit. The provision intended to convert the contract into a bailment, if the purchase-money should not be paid, was insufficient to make it a bailment, *ab initio*, and possession having been given to the buyer, his creditor could seize and sell the machine, notwithstanding the fact that he knew the terms of the contract. In a previous case, the Court had pointed out that the test is uniformly a question whether the parties intended to leave the title in the seller as security for the price: this would be a conditional sale. If a bailment was really intended, though coupled with an agreement to sell, this would be valid even against the creditors of the buyers: *Appeal of Edwards et al.*, 105 Penna. St. 103 (1884); so, *Dando v. Foulds*, Id. 74 (1884); and *Forrest v. Nelson*, 108 Id. 481 (1885); all affirmed in *Wheeler & Wilson Mfg. Co. v. Heil*, 115 Id. 487 (1886).

Later in the same year, May 2, 1887, while deciding *Wertz v. The H. W. Collender Co.*, the Court conceded "that the line is not sharply defined between the cases which hold that a chattel, held under a bailment and conditional sale, will be liable to execution, as the property of the bailee, and the other cases which declare that the property of the vendor shall not be so liable." Still, the Court was satisfied that a "letting" of a billiard table, rent paid in advance by notes, except a small cash payment at the

end of the term, possession delivered with agreement for recovery by seller on failure to pay any of the notes, and agreement to give a bill of sale when full payment had been made, was a bailment, good against the buyer's creditors.

In the latest reported case, the Court held the principle that retention of title is a fraud, was "too obvious and settled to allow of discussion:" *Shaeffer v. Zech*, May 25, 1888.

The Pennsylvania doctrine is founded upon the public policy adopted in that Commonwealth, and depends upon the possession and acts of ownership, exercised by the conditional vendee. No regard is paid by the Courts there, to the legal effect of the contract, or the place where it has been made. It is conceded that the property remains in the vendor, as between the parties and those having notice, but as to others possession under such a condition is considered a badge of fraud and the vendor's reserved title is not allowed to be asserted against not only *bona fide* purchasers from the vendee, but even his creditors. Hence, this doctrine is local and has no extra-territorial effect, and in another State the conditional contract will be construed according to the law of the *situs*: *Marvin Safe Co. v. Norton*, 48 N. J. Law, 410 (1886).

The other States and the Territories all start from the common basis of the validity of a conditional sale against any claims by the creditor of the conditional vendee, or any buyer from him, but, one by one, statutory notice is being required, varying in detail, as shown below. In all cases the sales are valid between the parties notwithstanding the statute.

I. *Nine States and Territories require recording in some cases*:-

Alabama ordains that "contracts for the conditional sale of railroad equipment or rolling stock, by the terms of which the vendor retains title until payment of the purchase-money, and the purchaser obtains possession, are void against the judgment creditors of the purchaser without notice, or purchasers from him for a valuable consideration without notice, unless such contracts are in writing, and, within three months after the making thereof, recorded in the office of the judge of the probate of the county in which such corporation may have its principal office or place of business; and if it has not in this State a principal office or place of business, then in the office of the secretary of state; and, in addition, all cars or engines so sold must have thereon plainly marked the name of the vendor:" Code (1886), § 1821. Otherwise, conditional sales are valid, even against a *bona fide* purchaser for value and without notice: *Fairbanks, Morse & Co. v. The Eureka Co.*, 67 Ala. 109 (1880), and *Sumner v. Woods*, Id. 139 (1880).

Arizona declares that "The following instruments of writing, which shall have been acknowledged or proved according to law, are authorized to be recorded, viz: all deeds, mortgages, conveyances, deeds of trust, bonds for title, covenants, defeasances or other instruments of writing concerning any lands and tenements, or goods and chattels, or movable property of any description, * * * and all deeds of trust and mortgages whatsoever, which shall hereafter be made and executed, shall be void as to all creditors and subsequent purchasers for valuable consideration without notice, unless they shall be acknowledged or proved and filed * * * with the recorder; but the same, as between the parties and

their heirs and as to all subsequent purchasers, with notice thereof, or without valuable consideration, shall nevertheless be valid and binding:" Rev. Stat. §§ 2601, 2602. There are no decisions upon this statute at hand, but it clearly does not apply to conditional sales by verbal contract.

In *Arkansas*, the sale of a chattel, with reservation of title until the purchase-money is paid, is valid against a second buyer for a valuable consideration without notice: *McIntosh v. Beam & Hill*, 47 Ark. 363 (1886); *McRea et al. v. Merrifield et al.*, 48 Id. 160 (1886); *Simpson et al. v. Shackleford et al.*, S. Ct. Ark., April 9, 1887; unless the possession remains with the vendee for more than five years, without payment of the price: *Deal v. Hecht*, U. S. Circ. Ct. E. D. Arkansas, 1880; 5 Fed. Rep. 419; Digest of 1884, § 3377.

In *Dakota*, "where railroad equipment and rolling stock may have been or shall be sold to any person, firm, or corporation, to be paid for in whole or in part, in instalments, or shall be leased, rented, hired, or delivered on condition that the same may be used by the person, firm, or corporation purchasing, leasing, renting, hiring, or receiving the same, and that the title to the same shall remain in the vendor, lessor, renter, hirer, or deliverer of the same until the agreed upon price of or rent for such property shall have been fully paid, such condition in regard to the title so remaining in the vendor, lessor, renter, hirer, or deliverer, until such payments are fully made, shall be valid for all intents and purposes as to subsequent purchasers in good faith and creditors; provided, the term during which the instalments of rent are to be paid shall not exceed ten years, and such contract shall be in writing and acknowledged. Such contract

shall be recorded in the office of the secretary of the territory, and in the county in which is located the principal office or place of business of such vendee or lessee; and on each locomotive and car that may have been or may be so sold or leased, the name of the vendor or lessor, or assignee of the vendor or lessor, shall be marked, followed by the word 'owner' or 'lessor' as the case may be:" Sess. Laws 1883, c. 93, §§ 1, 2; Levisee's Code, §§ 1814, *i. and j.*

In *Florida*, on a sale and delivery of printing machinery for part cash and balance on credit, with condition that the title should not pass until full payment, the Court held this to be a conditional sale, valid against subsequent judgment creditors and purchasers for a valuable consideration, without notice: *Campbell Mnfr. Co. v. Walker*, 22 Florida, 412; *s. c. 25 AMERICAN LAW REGISTER*, 677 (1886), following *Jackson Sharpe Co. v. Holland*, 14 Fla. 384 (1874); though the Court thought the contract ought to be recorded if the payments should not be all made before the expiration of two years, the statute providing that "where any reservation or limitation shall be pretended to have been made of a use or property by way of condition, reversion, remainder, or otherwise, in goods and chattels, the possession whereof shall have remained in another as aforesaid," that is, for two years, "the same shall be taken as to the creditor and purchasers of the persons aforesaid so remaining in possession, to be fraudulent within this Act, and that the absolute property is with the possessor, unless such * * * reservation, or limitation of use or property, were declared by will or deed in writing, proved and recorded as aforesaid:" *McClell. Dig.* p. 212, § 4.

Illinois has receded from her posi-

tion, "in all cases where any cars, locomotives, or vehicles used upon railways shall be delivered to any person or persons, or corporation, by the manufacturer or builder thereof, under lease, bailment, conditional sale, or other contract, providing that the title to the same shall remain in, or not pass from the lessor, bailor, or conditional vendor, until conditions fulfilled according to the terms of such contract, such contract shall be held and considered good, valid, and effectual, according to the terms, tenor, and effect thereof, both in law and in equity, as against all persons whatsoever, when the same shall be reduced to writing, acknowledged, and filed for record as hereinafter mentioned. The provisions of this Act shall apply only to sales made by manufacturers to purchasers, and no contract made in pursuance hereof shall be good for a longer period than four years, nor shall any such contract be renewed * * * This act shall not apply to railway rolling stock leased in the ordinary way without condition regarding purchase and sale, nor shall it affect the legality of any instrument of sale or lease existing at the time of the passing of this Act. * * * Provided, the lessor, bailor, or conditional vendor shall, within ten days from the first day of January in each year, file a sworn statement with the recorder of each county where the lease or sale bill * * * is recorded, and pay the recorder for putting the same on record, which statement shall show the names and dates and description of the contract and the amount due and unpaid thereon; and upon failure to make such statement, or if such statement is false, or made with the intent to deceive and mislead any creditor of said railroad in any way, then such lessor, bailor, or conditional vendor shall thereby lose all benefits which

he or they would otherwise have * * * :" Laws, 1881, p. 126.

Maine declares that "no agreement that personal property, bargained and delivered to another *for which a note is given*, shall remain the property of the payee till the note is paid, is valid unless it is made and signed as a part of the note, nor when it is so made and signed in a note for more than thirty dollars, except as between the original parties to said agreement, unless it is recorded like mortgages of personal property :" Act of Feb. 20, 1874, ch. 181, amending Rev. Stat. ch. 111, § 5.

In *Mississippi*, § 1300 of the Code of 1880, p. 373, is peculiar in giving notice, by providing that "If any person shall transact business as a trader, or otherwise, with the addition of the words *agent, factor, and company*, or *and co.*, or like words, and fail to disclose the name of his principal, or partner, by a sign in letters easy to be read, placed conspicuously at the house where such business is transacted, or if any person shall transact business in his own name, without any such addition, all the property, stock, money, and choses in action, used or acquired in such business, shall, as to the creditors of any such person, be liable for his debts, and be, in all respects, treated in favor of his creditors, as his property." But except as to traders (which jewellers are), conditional sales of personal property of every kind, when the vendor delivers possession and retains the title until paid, at any time within three years (Code, § 1293) remain valid : *Paine v. Hall's S. & Co.*, S. Ct. Miss. Jan. 10, 1887.

New York does not require recording on a conditional sale of household goods, pianos, organs, scales, engines and boilers, portable saw-mills and

saw machines, threshing machines and horse powers, mowing machines, reapers, and harvesters, and grain drills, with their attachments ; the contract of sale must be in duplicate and one copy delivered to the purchaser: Act, May 29, 1886, ch. 495. Otherwise, "in every contract for the conditional sale of goods and chattels hereafter made, which shall be accompanied by an immediate delivery, and be followed by an actual and continued change of possession of the things contracted to be sold, all conditions and reservations which provide that the ownership of such goods and chattels is to remain in the person so contracting to sell the same, or other person than the one so contracting to buy them until said goods or chattels are paid for, or until the occurring of any future event or contingency, shall be absolutely void as against subsequent purchasers and mortgagees in good faith, and as to them the sale shall be deemed absolute, unless such contract for sale with such conditions and reservations therein, or a true copy thereof shall be filed" of record, and a true copy again filed, thirty days before the end of one year from such filing of record : Act May 21, 1884, ch. 315, and Act June 11, 1888, ch. 488. Before the Acts, the law was the same as in *Massachusetts*, see *Harkness v. Russell*, 118 U. S. 673 (1886), per *BRADLEY*, J.

II. *Georgia*, in 1881, enacted, that whenever personal property is sold and delivered with the condition affixed to the sale, that the title thereto is to remain in vendor of such personal property until the purchase price thereof shall have been paid, every such conditional sale, in order for the reservation of title to be valid as against third parties, shall be evidenced in writing, and not otherwise.

And the written contract of every such conditional sale shall be executed and attested in the same manner as is now provided by existing laws for the execution and attestation of mortgages on personal property: *Provided, nevertheless*, that, as between the parties themselves, the contract, as made by them, shall be valid, and may be enforced, whether evidenced in writing or not. The existing statutes and laws of this State in relation to the registration and record of mortgages on personal property, shall apply to and affect all conditional sales of personal property as defined in this section:” Code of 1882, § 1955. This statute does not apply to instruments in existence, or transactions occurring before its enactment: *Bowen v. Frick & Co.*, 75 Ga. 786 (1885). The statute has an exception, that “cotton, corn, rice, crude turpentine, spirits of turpentine, rosin, pitch, tar, or other products sold by planters and commission merchants on cash sale, shall not be considered as the property of the buyer, or the ownership given up until the same shall be fully paid for, although it may have been delivered into the possession of the buyer:” Id. § 1593, as amended by Acts July 30, 1885, and October 13, 1885, Laws, pp. 45, 52. See *Roberts v. Savannah, etc., R. Co.*, 75 Ga. 225.

The *Iowa* Code, § 1922, provides that “No sale, contract, or lease, wherein the transfer of title or ownership of personal property is made to depend upon any condition, shall be valid against any creditor or purchaser of the vendee or lessee in actual possession, obtained in pursuance thereof without notice, unless the same be in writing, executed by the vendor or lessor, acknowledged and recorded the same as chattel mortgages.” This statute does not reach a case where an attachment is

laid on property in the hands of a sub-agent for the debts of an agent, because the plaintiff in such proceeding is not a creditor nor a purchaser from the sub-agent, and the question of title in the agent would have to be decided outside of the statute: *South Bend Iron Works v. Cottrell et al.*, U. S. Circ. Ct. N. D. Iowa, May Term, 1887, 31 Fed. Rep. 254. As to notice, this may be constructive as afforded by the record, or actual: *Warner v. Jameson*, 52 Iowa, 70 (1879); but no inquiry or diligence in seeking information of an unrecorded contract is required, the statute relieving the creditor or purchaser from the buyer: *Moline Plow Co. v. Braden et al.* (1887), 71 Iowa, 141.

Kentucky provides that “no deed of trust or mortgage, conveying a legal or equitable title to real or personal estate, shall be valid against a purchaser for a valuable consideration without notice thereof, until such deed shall be acknowledged or proved according to law, and lodged for record:” Gen. Stat. Ch. 24, § 10. The Court of Appeals have held, that, where a sale had been made with a reservation of title to railroad cars, this simply created a lien, valid between the parties but not affecting the rights of purchasers and creditors, unless the contract should be recorded, as provided in the statute: *Barney & S. Mfg. Co. v. Hart, Receiver*, Sept. 16, 1886; *Hart v. Barney, etc., Co.*, U. S. Circ. Ct. Dist. Ky. May 1881, 7 Fed. Rep. 543; *Vaughn, etc., v. Hopson*, 10 Bush (Ky.), 337 (1874), overruling *Patton v. McCane*, 15 B. Monroe (Ky.), 555 (1855).

Minnesota requires that “every note of hand or other evidence of indebtedness or contract, the conditions of which are that the title or ownership to the property for which said note or other evidence of indebtedness or con-

tract is given, remains in the vendor, shall be absolutely void, as against the creditors of the vendee, and as against subsequent purchasers and mortgagees in good faith, unless the note or other evidence of indebtedness or contract, or true copies thereof, or, if said contract be oral, then a memorandum expressing the terms and conditions thereof be filed" as therein provided; this creates sufficient notice until "after the expiration of one year from the day on which such note, or other evidence of indebtedness or contract, became due:" Act 1873, c. 65, incorporated in Gen. Stat. 1878, c. 39, §§ 15-20, and amended by Gen. Laws, 1883, c. 38, § 2. Under this statute actual notice was held to be sufficient to preserve the vendor's title, in the absence of filing, in analogy to the decisions upon the effect of actual notice of an unrecorded deed of real estate or of a chattel mortgage: *Dyer v. Thorstad* (Oct. 1, 1886), 35 Minn. 534.

The Missouri Rev. Code, § 2507, provides that "in all cases where any personal property shall be sold to any person, to be paid for, in whole or in part, in instalments, or shall be leased, rented, hired, or delivered to another on condition that the same shall belong to the person purchasing, leasing, renting, hiring, or receiving the same whenever the amount paid shall be a certain sum, or the value of such property, the title to the same to remain in the vendor, lessor, renter, hirer, or deliverer of the same, until such sum or the value of such property, or any part thereof, shall have been paid, such condition, in regard to the title so remaining until such payment, shall be void as to all subsequent purchasers in good faith, and creditors, unless such condition shall be evidenced by writing, executed, acknowledged, and recorded, as pro-

vided in cases of mortgages of personal property." This statute does not avoid a conditional sale between the parties, or as against purchasers with actual notice, antecedent creditors in all cases and subsequent creditors with notice: *Tufts v. Thompson*, 22 Mo. App. 564 (1886); *Defiance Mach. Wks. v. Trisler*, 21 Id. 69 (1886); *Coorer v. Johnson*, 86 Mo. 533 (1885); *Western L. & C. Co. v. Plumb et al.*, U. S. Circ. Ct. N. Dist. Ill. May 24, 1886, 27 Fed. Rep. 598. Nor does it include goods consigned to be sold on commission: *Peet et al. v. Spencer*, 90 Mo. 384 (1886).

In *Nebraska*, "no sale, contract, or lease, wherein the transfer of title or ownership of personal property is made to depend upon any condition, shall be valid against any purchaser or judgment creditor of the vendee or lessee in actual possession, obtained in pursuance of such sale, contract, or lease, *without notice*, unless the same be in writing, signed by the vendee or lessee, and a copy thereof filed in the office of the clerk of the county, within which such vendee or lessee resides; said copy shall have attached thereto an affidavit of such vendor or lessor, or his agent or attorney, which shall set forth the names of the vendor and vendee or lessor and lessee, or [and] description of the property transferred and the full and true interest of the vendor or lessor therein;" Comp. Stat. ch. 32, § 26. This record remains valid for five years, with provision for annual renewal thereafter. This statute invalidates secret liens in favor of the seller: *Manning et al. v. Cunningham*, S. Ct. Neb. Feb. 24, 1887.

New Hampshire (Statute of 1885, ch. 30, § 1,) provides that "no lien reserved on personal property sold conditionally and passing into the hands of a conditional purchaser shall

be valid against attaching creditors, or subsequent purchasers without notice, unless the vendor of such property takes a written memorandum, signed by the purchaser, witnessing such lien and the sum due thereon, and causes it to be recorded in the town clerk's office of the town where the purchaser of such property resides, if he resides in the State, otherwise in the town clerk's office of the town where the vendor resides, within ten days after such property is delivered." Section 2 provides for the affidavit of the parties to the good faith of the transaction. Where a written memorandum was made of a hiring, with condition that the goods should become the absolute property of the hirer when all the rent had been paid, and for a return of the goods if the rent should not be paid, this was held to be a conditional sale, and in the absence of the affidavit to the good faith of the transaction and of recording, was held void as against a creditor of the hirer: *Gerrish et al. v. Clark*, S. Ct. N. H. March 16, 1888. But such a sale is good against the assignee in insolvency of the buyer: *Adams v. Lee*, Id.

In *North Carolina*, the Code of 1883, provides that "all conditional sales of personal property in which the title is retained by the bargainor, shall be reduced to writing and registered in the same manner, for the same fees and with the same legal effect as is provided for chattel mortgages:" § 1275. This statute was held inapplicable to a lease of furniture, bedding, etc., for a stipulated rent, with condition that the property could be purchased at any time during the lease for the aggregate sum of the rent: this was a lease and not a conditional sale and need not be in writing nor registered, and a creditor of the lessee could not seize the prop-

erty: *Foreman v. Drake*, 98 N. C. 311 (1887).

Ohio permitted the vendor to retain the title pending the payment of the purchase-money, even as against innocent purchasers from his vendee (*Case Manfr. Co. v. Garvin*, S. Ct. Ohio, Oct. 25, 1887), until the first day of July, 1885, when a statute went in effect, providing "that in all cases where any personal property shall be sold to any person, to be paid for in whole or in part, in instalments, or shall be leased, rented, hired, or delivered to another on condition that the same shall belong to the person purchasing, leasing, renting, hiring, or receiving the same, whenever the amount paid shall be a certain sum, or the value of such property, the title to remain in the vendor, lessor, renter, hirer, or deliverer of the same, until such sum, or the value of such property, or any part thereof, shall have been paid, such condition, in regard to the title so remaining until such payment, shall be void as to all subsequent purchasers, and mortgagees in good faith, and creditors, unless such condition shall be evidenced by writing, signed by the purchaser, lessor, renter, hirer, or receiver of the same, and also a statement thereon, under oath, made by the person so selling, leasing, or delivering any property as herein provided, his agent, or attorney of the amount of the claim, or a true copy thereof, with an affidavit that the same is a copy, deposited with the clerk of the township where the person signing the instrument resides at the time of the execution thereof, if a resident of the State, and if not such resident, then with the clerk of the township in which such property is sold, leased, rented, hired, or delivered, is situated at the time of the execution of the instrument;" or with the county recorder, if his office is

kept in such township (82 Laws of Ohio, 238). This is substantially the same provision as those relating to chattel mortgages: §§ 4150-2, Rev. Stat. Ohio.

The *South Carolina* statute ordains that "no mortgage, or other instrument of writing in the nature of a mortgage, of personal property shall be valid, so as to affect, from the time of such delivery or execution, the rights of subsequent creditors, or purchaser for valuable consideration without notice, unless recorded within forty days from the time of such delivery or execution, in the office of register of mesne conveyances of the county where the owner of said property resides, if he reside within the State; or, if he resides without the State, of the county where such personal property is situated at the time of the delivery or execution of said deeds or instruments: *Provided, nevertheless,* That the above-mentioned deeds or instruments in writing, if recorded subsequent to the expiration of said period of forty days, shall be valid to affect the rights of subsequent creditors and purchasers for valuable consideration without notice, only from the date of such record:" Gen. Stat. 1882, ch. xcv. § 2346. The other "instrument of writing" includes a promissory note, given for the purchase of a fire-proof safe, and embodying these words, that the sellers "do not part with any title thereto, until the purchase-money has been fully paid." The safe could be taken in execution, while in the buyer's possession, by his subsequent creditors, because the note had not been recorded: the statute "was intended to embrace such conditional sales as the one in this case, and in that way to cut up, root and branch, *all secret liens*, whether written or verbal, in respect to the rights of sequent credi-

tors and purchasers for valuable consideration without notice:" *Herring & Co. v. Cannon*, 21 S. Car. 212 (1884).

Texas has departed from the principle laid down in *City Nat'l Bank v. Tufts*, 63 Tex. 113 (1885), followed in *Tufts v. Cleveland*, decided February 4, 1887, by enacting "that all reservations of the title to or property in chattels as security for the purchase-money thereof, shall be held to be chattel mortgages, and shall, when possession is delivered to the vendee, be void as to creditors and *bona fide* purchasers, unless such reservations be in writing and registered as required of chattel mortgages:" Gen. Laws, 1885, c. 78, § 1, p. 76. And, in addition, the general principle was also adhered to that the attempt to protect a stock of goods, sold and replaced in the course of trade, by a reservation of title in the seller of the original goods until he should be paid must be held fraudulent: *Loving Pub. Co. v. Johnson et al.*, S. Ct. Texas, May 13, 1887.

Vermont has a statute, verbally the same as § 1 of the New Hamp. stat., except the time of recording is extended to 30 days: Rev. Stat. § 1992. This statute does not invalidate the conditional sale as to creditors with notice: *Whitcomb v. Woodworth*, 54 Vt. 544 (1882).

The *Virginia* Supreme Court of Appeals has, this year, decided that "an unrecorded contract of conditional sale of personal property is valid, as against purchasers from the vendee, without notice," on the ground that the weight of American authority is in accordance with the common-law rule, as laid down by the Supreme Court of the United States. (*Supra*) The doctrine that possession is one of the evidences of title was repudiated as encouraging carelessness in the

buyer, who is bound to inquire into the seller's title in cases of hiring, or lending, or leaving goods to be made, and who ought not in cases of conditional sales only to infer title from one of three elements of true title. The Legislature, however, differed on the expediency of such sales, and by the Revised Code, to take effect May 1, 1888, provided, § 2462, p. 599, that "every sale or contract for the sale of goods or chattels, wherein the title is reserved until the same be paid for, in whole or in part, or the transfer of the title is made to depend on any condition, and possession be delivered to the vendee, shall be void as to creditors of and purchasers for value without notice from such vendee, unless such sale or contract be evidenced by writing executed by the vendor, in which the said reservation or condition is expressed, and until and except from the time the said writing is duly admitted to record in the county or corporation in which said goods or chattels may be, or, if said goods and chattels consist of locomotives, cars, or other rolling stock, equipment or personal property of any description, to be used in or about the operation of any railroad, until and except from the time the said writing is duly admitted to record in the clerk's office of the county or corporation court of the county or corporation wherein the principal office in this State of the company operating the railroad is located, or in the clerk's office of the Chancery Court of the City of Richmond, if said principal office is within the corporate limits of the said city, and a copy of said writing be filed in the office of the Board of Public Works, and each locomotive, car, or other piece of the rolling stock, be plainly and permanently marked with the name of the vendor on both sides thereof, followed by the word *owner*."

§ 2468 provides for recording in another county, to which the goods are removed, within one year after the removal; otherwise, to "be void as to such creditors or purchasers" in every case, except that as to the interests of married women (not her separate estate), of infants, and of insane persons, the time for recording is one year after removal of disability.

West Virginia declares, that "if any sale be made of goods and chattels, reserving the title until the same is paid for, or otherwise, and possession be delivered to the buyer, such reservation shall be void as to creditors of, and purchasers without notice from, such buyer, unless a notice of such reservation be recorded in the office of the clerk of the county court of the county where the property is, or in case said goods and chattels consist of engines, cars, or other rolling stock, or equipment to be used in or about the operation of any railroad, unless such notice be recorded in the office of the Secretary of State. * * * Code, 1887, ch. lxxiv. 3. The other portions of this section do not relate to such sales: See *Blackwell et al. v. Walker et al.*, U. S. Circ. Ct. E. D. Ark. 1880, 5 Fed. Rep. 419. Such sales are good between the parties: *McGinnis et al. v. Savage et al.*, S. Ct. App. February 2, 1887.

Wisconsin: See, above, p. 585, *sqq.*

III. *One State requiring writing, in some cases, but not recording.*

Massachusetts requires that "all contracts for the sale of furniture or other household effects, made on condition that the title to the property sold shall not pass until the price is paid in full, whether such contract be in the form of a lease or otherwise, shall be in writing, and a copy thereof shall be furnished the vendee by the vendor, at the time of such sale, "and all payments made by or in be-

half of the vendee, and charges, whether in the nature of interest or otherwise, as they accrue, shall be indorsed by the vendor or his agent, upon such copy, if the vendee so requests. If the vendor fails to comply with any of the provisions of this section through negligence, his rights under such contract shall be suspended while such default continues; and if he refuses or wilfully or fraudulently fails to comply with any of such provisions, he shall be deemed to have waived the condition of such sale :" § 1 (complete), ch. 313, Acts 1884, 342. Otherwise, the validity of conditional sales was affirmed in *Blanchard v. Cooke*, 144 Mass. 207 (1887).

IV. *Seventeen States and Territories require neither writing nor recording.*

In California no title was held to pass on a conditional sale of wood to be cut and to remain on seller's land until one dollar per cord should be paid; before payment the sheriff seized and sold the wood as the property of the buyer, and the seller was allowed to recover the full value of the wood: *Stokes v. Baleam*, S. Ct. Cal. July 27, 1887. But shortly before this the Court held that they would look into the intention to observe, whether the parties meant a conditional sale with reservation of title or a sale in which the substantial ownership would be vested in the buyer, with security for payment, and hold the latter to the requirements of chattel mortgages: *Palmer et al. v. Howard*, S. Ct. Cal. May 20, 1887.

Colorado extends the provisions of her chattel mortgage laws, which require delivery of possession to the mortgagee, or acknowledgment and recording, Gen. Stat. ch. xiv. § 163, "to all such bills of sale, deeds of trust, and other conveyances of personal property, as shall have the

effect of a mortgage or lien upon such property: Id. § 169.

It is presumable that reservation of title would be distinguished from a lien.

Connecticut sustains conditional sales: *Cooley v. Gillan*, 54 Conn. 80 (1886), and *Warren Mfg. Co. v. Norwich, etc., Co. et al.*, S. Ct. Errors, March, 1888, citing *Lewis v. McCabe*, 49 Conn. 141 (1881); but "any property sold upon condition, and put by the vendor into the visible possession of the vendee, unless otherwise exempt from execution, may be attached and levied upon and sold or set out on execution in any suit against such vendee, subject to the rights of the vendor to its possession or ownership; and the party attaching or levying shall have the same rights, which the vendee would otherwise have had to tender to the vendor performance of the conditions of sale; and all parties deriving title under the execution shall succeed to all the rights of the vendee, in relation to such property :" Gen Stat. Revis. 1875, Tit. 19, ch. 2, § 35.

Delaware Courts hold conditional sales of personal property to be valid; and, where delivery of property is made upon agreement that no title shall pass until payment is made or some other thing is done or occurs, no title passes to the party to whom the property is delivered, until the condition is fulfilled; and none can be passed to his vendee, no matter how ignorant of the secret contract: *Watertown Steam Engine Co. v. Davis*, 4 Hous. (Del.) 192, and in the U. S. Dist. Ct. (Dist. Md.), the Court say— " It is conceded that there is no statute of Delaware which affects the question of a conditional delivery of chattels, or which legislates with regard to bills of lading, and there is no rule of the common law which forbids

such a transaction," citing *Harkness v. Russell, supra*; *The John K. Shaw*, April 12, 1887, 32 Fed. Rep. 491.

Idaho has no statute, and in the absence of any decisions the general rule would seem applicable.

In *Indiana* the Supreme Court has affirmed the rule that "where the owner of personal property sells and delivers it to a purchaser, not for the purpose of consumption or re-sale, at any agreed price, payable at a future day, upon the express condition and agreement that the title to such property should remain in the vendor thereof until the purchase price was fully paid, the vendee of such property, prior to such payment, can neither sell nor incumber the property in such manner as to defeat the title of the original owner and vendor thereof;" but otherwise, when the property is delivered for a re-sale, such condition "must be deemed fraudulent and void as against purchasers from the original vendee:" *Winchester W. W. & Mfg. v. Carman*, 109 Ind. 31 (1887).

The *Kansas* Courts uphold conditional sales even against a *bona fide* purchaser; neither the statute relating to frauds (Comp. Laws, 1885, §§ 2817, 2818), nor to chattel mortgages (Id. §§ 3499 *et seq.*), apply: *Summer v. McFarlan*, 25 Kan. 600 (1875), and *Hallowell v. Milne*, 26 Id. 65 (1876).

In *Michigan*, the Supreme Court, after saying that the vendor's rights in a conditional sale are recognized against mortgagees (*Hood v. Olin*, January 12, 1888), and innocent purchasers for value, add that "the vendor's rights to follow the property into the hands of third parties or to sue them for a conversion, are made to depend upon the good faith of the transaction, and, where the purchase is made from the vendee in good faith

and without notice, under circumstances in which the original vendor must have known or contemplated that the mill machinery 'would be sold by his vendee,' a millwright, and placed in the mill of the defendants and so 'incorporated in, or made a part of, the freehold, his, the vendor's, rights have been made subservient to those of the innocent purchaser:'" *Jenks v. Colwell*, June 23, 1887.

In *Montana*, where a lease with the privilege of purchase on payment of a sum in addition to the rent, had expired, the cattle remained in the lessee's possession and the additional sum had not been paid, the Court held this no fraud upon the lessee's creditors, as the parol agreement for a conditional sale was valid even against the creditors (citing *Harkness v. Russell, supra*; *Heinbockle v. Zugbaum*, 5 Mont. 344 (1885), and *Silver Bow M. & M. Co. v. Lowry*, 6 Id. 288 (1887); *Miles v. Edsall*, S. Ct. Montana, July 29, 1887.

In *Nevada* a conditional sale passes no title which can be taken into execution by the buyer's creditors, until the performance of the condition, unless the condition is waived by an absolute and unconditioned delivery of the property: *Cardinal v. Edwards*, 5 Nev. 36 (1869).

In *New Jersey* and *New Mexico* the Courts uphold the conditional sales even against purchasers without notice for a valuable consideration, of chattels brought from another State, and chattel mortgages and conveyances which create the relation of debtor and creditor are distinguished from such sales: *Marvin Safe Co. v. Norton*, 48 N. J. Law, 410 (1886); *Redewill v. Gillen*, S. Ct. New Mex. January 19, 1887.

In *Oregon* the Supreme Court, as recently as February 29, 1888 (*Schneider v. Lee et al.*), refused to depart

from the former decisions of *The Singer Mfg. Co. v. Graham et al.*, 8 Oregon, 17 (1879), and *Rosendorf et al. v. Baker*, Id. 240 (1880), and again held that a sale to a *bona fide* purchaser would convey no title as against the seller, of personality, upon condition of retaining title until payment in full. The Court felt "sustained by such high authority as that of the Supreme Court of the U. S." in *Harkness v. Russell, supra*.

Rhode Island: the right of the conditional vendee is merely a right resting in contract and not subject to attachment: *Goodell v. Fairbrother*, 12 R. I. 233 (1878); though, where there is possession and the right to use the machinery conditionally sold a sale or mortgage, subject to the payment of the price, may be made: *Carpenter v. Scott*, 13 R. I. 477 (1881).

In *Tennessee, Utah, and Washington Territory* a conditional sale is valid, and a purchaser from the vendee acquires no title, unless the vendee is clothed with authority to sell: *Wilder & Co. v. Wilson*, 16 Lea, 548 (1886); *De Saint Germain et al. v. Wind*, S. Ct. Wash. Terr. February 4, 1887; *Harkness v. Russell*, 118 U. S. 663 (1886).

In *Wyoming* conditional sales are valid, even against the purchaser for a valuable consideration, without notice, from the assignee for the benefit of creditors of the conditional buyer. Such sales are not within the statute relating to chattel mortgages: *Warner v. Roth*, 2 Wy. Rep. 63 (1879).

From the statutes quoted it is clear that uniformity of local legislation is not beyond hope, and, as a step in that direction, the following is suggested as a general law on the subject of conditional sales: "Be it enacted, etc., that no sale, lease, bailment, or other transfer of personal property, where the possession of such property

is delivered to the buyer, lessee, bailee, or other transferee, upon condition that the title to such property shall remain in the seller, lessor, bailor, or other transerrer, until payment of certain sum or sums or the performance of certain acts, shall be of any validity against the future creditors of such buyer, lessee, bailee, or other transferee, or against his pledgee, lessee, mortgagee, or vendee, without notice of such condition, unless, and only so far as the terms of such conditional sale, lease, bailment, or other transfer, shall be reduced to writing, executed, and acknowledged by both parties to the contract, and recorded in the (county) where the property is at the time of such recording, and also recorded in every other (county) to which such property may be removed from time to time before the performance of the condition. *Provided, nevertheless*, that when specific articles are sold, leased, bailed, or otherwise transferred, and are distinctly marked with the words 'conditionally sold by A. B. to C. D.', it shall not be necessary to record the contract but only to reduce it to writing and execute and acknowledge it as aforesaid."

"§ 2. Parol evidence and other writings detached from the recorded contract shall not be competent evidence to vary the contract executed and acknowledged as aforesaid."

Further details are not so important that local variations should be deplored in their practical effects *at present*.

While not within the scope of this annotation, it is to be generally noted that the law of the *situs*, and not of the contract, prevails: *Barney, etc., Co. v. Hart, Receiver*, Ct. App. Ky. Sept. 16, 1886; *Marvin Safe Co. v. Norton*, 48 N. J. Law, 410 (1886); *Fosdick v. Schall*, 99 U. S. 250 (1878).